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Federal Communications Commission
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OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
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April 9, 1997

96-170

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

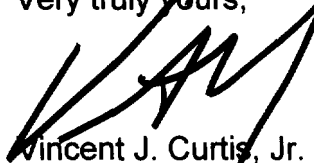
Re: Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Franklin, Louisiana)

Dear Mr. Caton:

Transmitted herewith, on behalf of Annette G. Thompson, are an original and four copies of her "Opposition to Counterproposal" in connection with the above-captioned proceeding.

If additional information is necessary, please communicate with this office.

Very truly yours,



Vincent J. Curtis, Jr.
Counsel for Annette G. Thompson

VJC:mah
Enclosure

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 9 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

)
)
Amendment of Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations)
(Franklin, Louisiana))

MM Docket No. 96-170
RM-8844

Directed to: Chief, Allocations Branch

OPPOSITION TO COUNTERPROPOSAL

Comes now Annette G. Thompson, by her attorneys, and respectfully submits her objection to the Counterproposal of White Castle Broadcasting ("White Castle") and again, requests that the Commission dismiss the Counterproposal as being filed untimely and not in accord with Commission procedures. In support, the following is stated:

1. Despite a Motion to Dismiss filed by Annette G. Thompson ("Thompson"), the proponent of the Franklin, Louisiana proposal,¹ the Commission's staff issued a Public Notice on March 26, 1997 (Report No. 2183) placing the White Castle "Counterproposal" out for public comment. The staff apparently chose to ignore the facts that Thompson outlined in her Motion to Dismiss that White Castle had failed to follow clear Commission requirements of filing an original and four copies of its Counterproposal. Rather, White

¹A copy of the Motion to Dismiss is attached hereto for the Commission's convenience. Apparently the staff totally ignored this filing and the issues raised.

Castle claimed that it ignored the Commission's instructions and "faxed" its Counterproposal to the Commission. There is no such existing acceptable procedure for the faxing of comments/replies/counterproposals in broadcast allocation proceedings. The staff is clearly without authority to make a post-fact change in its procedures that affects other parties, particularly without prior public notice.²

2. Even the full Commission recognized that it needed to provide public notice and establish a rule making to consider electronic filings of documents in rulemaking proceedings. See Notice of Proposed Rule Making (GC Docket No. 97-113), FCC 97-113, released April 7, 1997. Even there, the full Commission specifically excluded broadcast allotment proceedings. Id. at Note 2. It is evident that the staff has no authority to accept the White Castle "Counterproposal."

3. Moreover, the established procedures required a timely service upon counsel for Mrs. Thompson. Although the Certificate of Service claimed service as of October 7, 1996 (the date Comments/Counterproposals were due), Thompson submitted evidence that the copies were not mailed until October 8, 1996. For this reason alone, the Counterproposal should be dismissed.

²But for White Castle, no other parties filed comments in this proceeding. Thus, the "acceptance" of untimely and procedurally incorrect White Castle "Counterproposal" directly impacts on Mrs. Thompson's legitimate allotment proposal.

Conclusion

White Castle has failed to follow clearly established procedures for the filing and service of Comments/Counterproposals. Moreover, the staff is without authority to make a post-fact change in procedural rules that affect substantive rights of parties without proper notices. In short, the White Castle "Counterproposal" must be dismissed.

Respectfully submitted,

ANNETTE G. THOMPSON

By: 

Vincent J. Curtis, Jr.

Her Attorney

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th St., 11th Floor
Rosslyn, VA 22209
(703) 812-0400

April 9, 1997

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-170
Table of Allotments,) RM-8844
FM Broadcast Stations)
(Franklin, Louisiana))

Directed to: Chief, Allocations Branch

MOTION TO DISMISS

Comes now Annette G. Thompson, by her attorneys, and respectfully requests that the Commission immediately dismiss the untimely Comments and Counterproposal of White Castle Broadcasting ("White Castle") filed in the above-captioned proceeding. In support, the following is stated:

1. This proceeding was initiated at the request of Mrs. Thompson and instituted by a Notice of Proposed Rule Making (NPRM), DA96-1272, released on August 16, 1996. Any comments were required to be received by the Commission on or before October 7, 1996. Id. at ¶ 5. Copies of such comments were required to be timely served upon undersigned counsel for Mrs. Thompson. Id. Moreover, an original and four copies of any comments were required to be timely filed. Appendix to NPRM at ¶ 5. White Castle failed to meet any of these requirements, and its Comments and Counterproposal must be summarily dismissed.

2. Attached hereto (Attachment A) is a copy of the Commission's draft docket card for the proceeding reflecting the White Castle filing, together with a copy of that filing

as received by the Commission's mail room. Both clearly reflect receipt of that filing on October 9, 1996, two (2) days after the date set in the NPRM. Although counsel for White Castle claims that a fax of the White Castle filing was sent to the FCC on October 7, 1996, there is no record of such a document at the FCC. Moreover, it is clear that to be timely, an original and four (4) copies of the filing were required to be received on October 7, 1996. Even counsel for White Castle does not claim he faxed four (4) such additional copies on October 7, 1996.

3. It is also clear that White Castle was required to serve counsel for Mrs. Thompson in a timely manner. Although the Certificate of Service attached to White Castle's filing claims that a copy was mailed to the undersigned on October 7, 1996, Attachment B is a copy of the envelope that accompanied that copy and which clearly reflects that it was not mailed until October 8, 1996, the day after the due date scheduled by the NPRM and specified in the Certificate of Service.¹ For this reason alone, the White Castle filing should be rejected.

¹This activity raises an entirely separate question concerning the falsification of the Certificate of Service by counsel for White Castle, who signed the Certificate. That matter need not be raised here but should be directed to the General Counsel's office for investigation.

Conclusion

For the reasons set forth above, the Comments and Counterproposal of White Castle Broadcasting should be summarily dismissed. Furthermore, since Mrs. Thompson was the only party filing timely, it is requested that the allotment of Channel 295C3 at Franklin, Louisiana be granted.

Respectfully submitted,

ANNETTE G. THOMPSON

By: 

Vincent J. Curtis, Jr.

Her Attorney

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street, 11th Floor
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October 17, 1996

ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION

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SUBMITTED: 10/11/1996 @ 14:03:57

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Docket Number: 96-170
Rulemaking Number:
Date of Filed Document: 100896
Name of Applicant/Petitioner: WHITE CASTLE BROADCASTING
Law Firm Name: WILLIAM J. PENNINGTON
Attorney/Author Name: PENNINGTON, WILLIAM J.
File Number/City, St.:
Document Type: CO <COMMENT >
FCC Number/DA Number:
Release Date/Denied Date:
Receipt/Adopted/Issued Date: 100996
Exparte/Late Filed:
Viewing Status: 0 <Unrestricted>
Total Page Count: 7

WILLIAM J. PENNINGTON III

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PRACTICE LIMITED TO
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FEDERAL COMMUNICATIONS COMMISSION

October 8, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: Comments and Counterproposal in MM Docket No. 96-170;
RM 8844. (Franklin, Louisiana).

Dear Mr. Caton:

Transmitted herewith, on behalf of White Castle Broadcasting, is an original and four (4) copies of their Comments and Counterproposal in the above-captioned rule making proceeding. A copy of this material was timely filed with the Commission, via facsimile, on October 7, 1996. The attached material represents the original and four copies as required by Commission rules.

Should additional information be needed regarding this matter please do not hesitate to contact the undersigned.

Sincerely,



William J. Pennington, III
COUNSEL TO WHITE CASTLE BROADCASTING

Enc.
WJP/klm

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 96-170
Table of Allotments) RM-8844
FM Broadcast Stations)
(Franklin, Louisiana))

Directed to: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL OF WHITE CASTLE BROADCASTING

White Castle Broadcasting (hereinafter "WCB"), through counsel, hereby submits its comments and counterproposal in the above-captioned rule making proceeding. It is counterproposed that FM Channel 295A be allotted to White Castle, Louisiana as its first local FM broadcast service. In support whereof the following is shown:

1. The petitioner in this proceeding, Annette G. Thompson, has sought the allocation of Channel 295C3 to Franklin, Louisiana as a second local FM broadcast service. Channel 288A is presently allocated to Franklin, Louisiana. Station KFMV(FM) is presently authorized for operation on that frequency.

2. WCB counterproposes the use of Channel of Channel 295A to White Castle as a first local FM service. Exhibit 1 is a channel spacing study which shows that Channel 295A may be allocated to White Castle with a site restriction of seven kilometers to the

south of the community. Exhibit 2 shows that from this location a Class A facility operating with maximum facilities would easily place a 70 dBu service contour completely over the community of White Castle.

3. White Castle, an incorporated community in Iberville Parish, had a 1990 population of 2,102 persons. If Channel 295A were allotted to White Castle it would represent the first commercial FM allotment in Iberville Parish which had a 1990 population of 31,049 persons.

4. Since the allotment of Channel 295A to White Castle would provide a first local FM service, this counterproposal would create a higher allotment priority than the petitioners request for a second local FM service to Franklin.

5. Should the Commission allot Channel 295A to White Castle, WCB will file an application seeking a construction permit to build the new station. If granted the construction permit, WCB will immediately construct the new facility.


6. In sum, it is requested that the Commission make the following change in the Table of FM Allotments:

ALLOTMENTS		
<u>COMMUNITY</u>	<u>EXISTING</u>	<u>PROPOSED</u>
White Castle, LA	None	295A

WHEREFORE, White Castle Broadcasting respectfully requests that the Commission allot Channel 295A as a first FM service to White Castle, Louisiana.

Respectfully submitted,

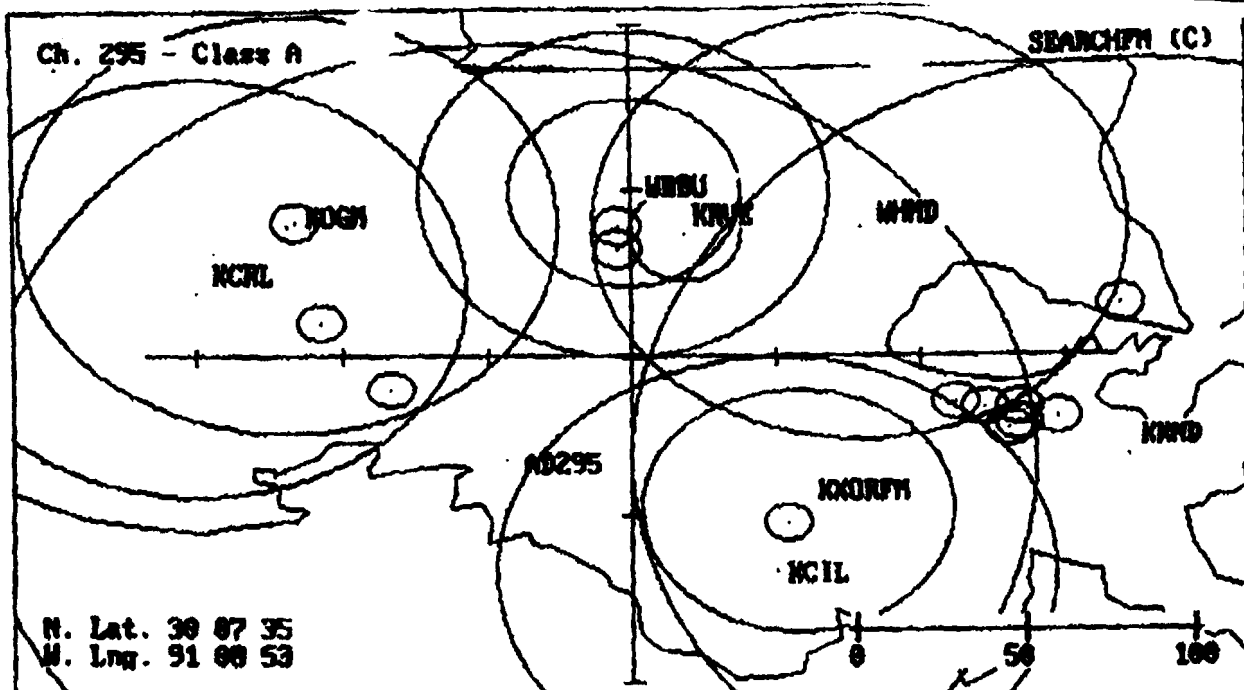
WHITE CASTLE BROADCASTING



William J. Pennington, III
Its Attorney

William J. Pennington, III
Attorney at Law (NC & SC BARS ONLY)
Post Office Box 403
Westfield, LA 01086
(413) 562-3341

October 6, 1996



white castle

Data 10-04-96

Current rules spacings

CHANNEL 295 -106.9 MHz

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD295	295C3	Franklin	LA	223.0	50.26	142.0	-91.74 *
KQXLPM	293C2	New Roads	LA	358.4	55.12	55.0	0.12 <
WHMD.C	296A	Hammond	LA	55.6	74.97	72.0	2.97 <
WHMD	296A	Hammond	LA	55.6	74.97	72.0	2.97 <
KKND	294C1	Port Sulphur	LA	104.8	138.37	133.0	5.37
KCIL	298C1	Houma	LA	152.5	84.92	75.0	9.92
WBBU	297A	Baker	LA	358.4	55.12	31.0	24.12
KXORFM	292C3	Thibodaux	LA	140.3	68.90	42.0	26.90
KRVE	241C2	Brusly	LA	18.8	42.91	15.0	27.91
KOGM	296A	Opelousas	LA	295.7	102.09	72.0	30.09
KCRL	294A	Rayne	LA	280.8	118.34	72.0	46.34

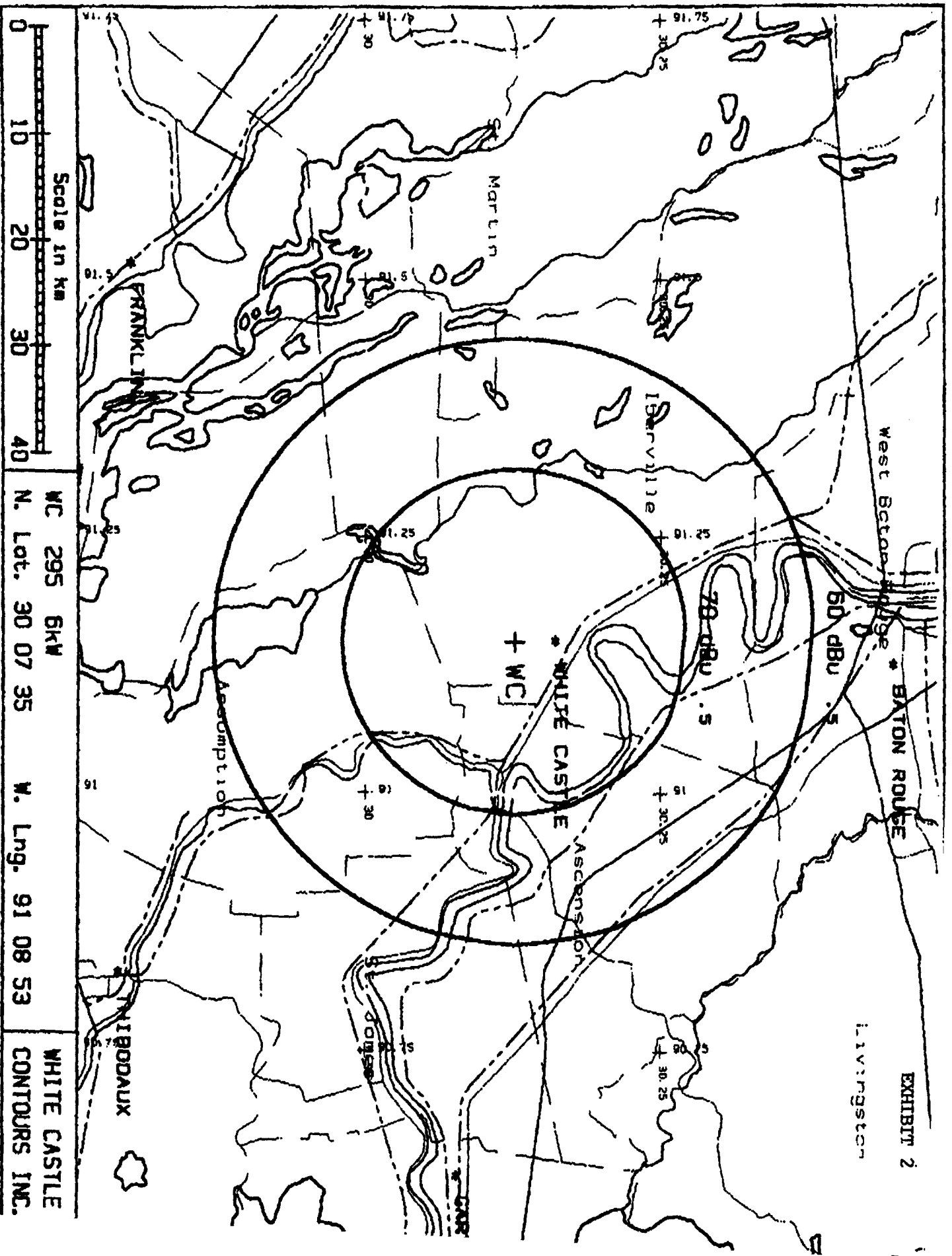


EXHIBIT 2

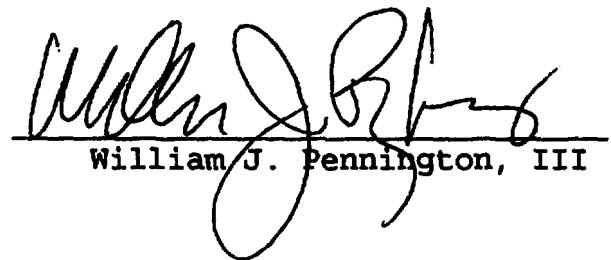
Scale in km	WC 295 BkW	WHITE CASTLE
0 10 20 30 40	N. Lat. 30 07 35	CONTOURS INC.
	W. Long. 91 08 53	

CERTIFICATE OF SERVICE

I certify that the Comments and Counterproposal of White Castle Broadcasting were mailed first class, postage prepaid, on October 7, 1996 to the following:

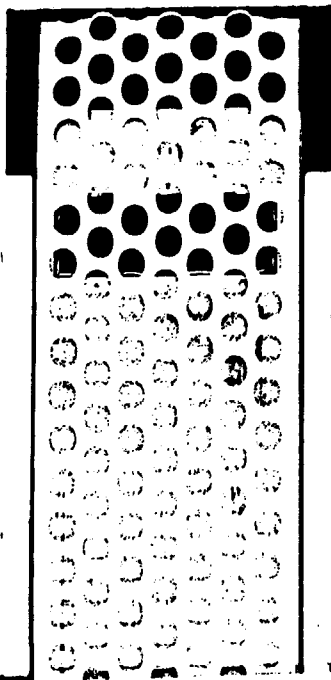
Vincent J. Curtis, Esq.
Fletcher heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209

COUNSEL TO ANNETTE G. THOMPSON



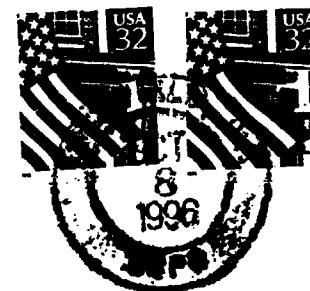
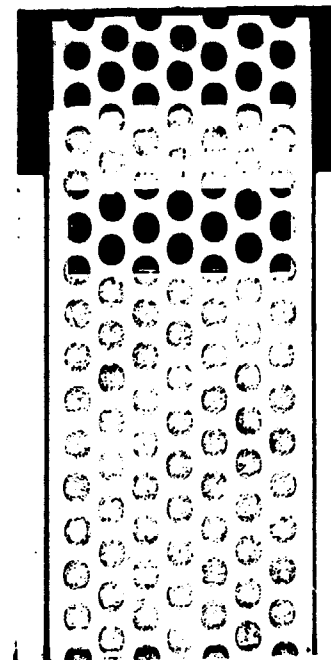
William J. Pennington, III

ATTACHMENT B



WILLIAM J. PENNINGTON III
ATTORNEY AT LAW

P.O. BOX 403
WESTFIELD, MA 01086-0403



VINCENT J. CURTIS, ESQ.
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 NORTH 17TH STREET
ROSSLYN, VA 22209

22209/3801 00



CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Motion to Dismiss" were sent this 17th day of October, 1996, by United States mail, postage prepaid, to the following:

Ms. Pamela Blumenthal*
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W., Room 8308
Washington, DC 20554

William J. Pennington, III
P.O. Box 403
Westfield, MA 01086

*BY HAND DELIVERY


Mary A. Haller

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Opposition to Counterproposal" were sent this 9th day of April, 1997, by United States mail, postage prepaid, to the following:

Ms. Pamela Blumenthal*
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W., Room 8308
Washington, D.C. 20554

Roy J. Stewart, Esquire, Chief*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, DC 20554

Mr. John A. Karousos*
Federal Communications Commission
Mass Media Bureau
2000 M Street, N.W., Room 554
Washington, DC 20554

William J. Pennington, III
P.O. Box 403
Westfield, MA 01086

*BY HAND DELIVERY


Mary A. Haller